

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-13-A - ORDER NO. 2020-441

JUNE 30, 2020

IN RE: Application of Chem-Nuclear Systems, LLC,)	ORDER APPROVING
a Subsidiary of EnergySolutions Company)	AND IDENTIFYING
for Adjustment in the Levels of Allowable)	ALLOWABLE COSTS
Costs and for Identification of Allowable)	
Costs (Fiscal Year 2019-2020))	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“PSC” or the “Commission”) by way of the Application of Chem-Nuclear Systems, LLC, a subsidiary of Energy Solutions Company (“Chem-Nuclear” or the “Company”), dated September 26, 2019 (the “Original Application”). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2018-2019, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2019-2020, all of which are associated with the operation of the Company’s regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina (the “Barnwell Facility”). The Original Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act (the “Act”), which is codified as S.C. Code Ann. § 48-46-10, *et. seq.* (2008 & Supp. 2019). On February 28, 2020, the Company filed and served an Amended Application and Exhibits, and on March 9, 2020, the

Company filed and served a Second Amended Application, which proposed certain revisions to the information contained in the Original Application to reflect the Company's reconciliation of certain issues with the South Carolina Office of Regulatory Staff ("ORS"). Also, on March 9, 2020, the Company filed and served the Amended Direct Testimony of Benjamin S. Smith,¹ reflecting the position of the Company as contained in the Second Amended Application and Exhibits.

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina's membership in the Atlantic Interstate Low-Level Radioactive Waste Management Compact Commission (the "Compact Commission") and authorizes the manner in which South Carolina participates in the Compact Commission with the other two member states, Connecticut and New Jersey. S.C. Code Ann. § 48-46-20 (Supp. 2019).

The Act fixed a schedule of annually declining maximum volumes of low-level radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact Commission's member states. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2019). Starting on July 1, 2008, the Barnwell Facility was limited to accepting waste exclusively from generators in South Carolina, New Jersey, and Connecticut, the three Compact Commission states. In addition, the Act fixes responsibility for the approval of disposal rates for low-level radioactive waste and provides for the

¹ On February 28, 2020, the Company filed the original Direct Testimony of Benjamin S. Smith.

disposition of revenues produced by the operation of disposal facilities subject to the Act. The Barnwell Facility is the only disposal facility for low-level radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the “allowable costs” of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Supp. 2019). “Allowable costs” are “costs to a disposal site operator of operating a regional disposal facility,” and they “are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations.” S.C. Code Ann. § 48-46-30(1) (2008). The Act provides that “allowable costs” expressly include the costs of certain specifically identified activities necessary in the operation of a low-level radioactive waste facility, in addition to any other costs directly associated with disposal operations determined by the Commission as allowable. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Supp. 2019). The Act excludes from identification as “allowable costs” the costs of certain expressly listed activities “and other costs determined by the PSC to be unallowable.” S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2019).

The Act entitles a disposal facility operator to recover an operating margin of twenty-nine percent (29%). This operating margin is authorized for the total amount of all identified “allowable costs,” excluding allowable costs for taxes, licensing, and permitting fees, which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2019).

The level of “allowable costs” and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At

the end of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue that the operator had received for waste disposal services during the fiscal year, reduced by the operator's identified "allowable costs," and reduced further by the twenty-nine percent (29%) statutory operating margin on the "allowable costs" under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of administrative costs incurred for the conduct of certain state agencies' functions in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2019). The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of "allowable costs," which the Commission had identified for the previous fiscal year and for identification of costs which the Commission had not previously identified as "allowable costs." S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2019). Upon disposition of the issues in an application, the Act requires the Commission to authorize the site operator to adjust its "allowable costs" for the current fiscal year to compensate the site operator for revenues "lost" during the previous fiscal year (that is, the difference between the level of "allowable costs" previously identified and the level of "allowable costs" identified upon approval of the application). Id.

Chem-Nuclear filed its Original Application, Amended Application, and Second Amended Application in this proceeding seeking to adjust the level of certain "allowable costs" which the Commission identified in Order No. 2019-422 and the amount of such costs that the Company actually experienced in the Fiscal Year 2018-2019. The Original Application, Amended Application, and Second Amended Application also sought

identification of the Company’s “allowable costs” for Fiscal Year 2019-2020. Chem-Nuclear’s Second Amended Application sought an adjustment for additional compensation for the “vault cost” variable cost rates that were established by Order No. 2019-422, and applied during fiscal year 2018-2019. The actual incurred total cost for routine disposal vaults was \$2,660 more than the costs allowed by the rates set previously. Second Amended Application for Fiscal Year 2019-2020, ¶12 and Second Amended Exhibit A to the Second Amended Application.

Additionally, Chem-Nuclear’s Second Amended Application sought an adjustment for additional compensation for the Company for the “irregular costs” incurred in Fiscal Year 2018-2019 as the actual costs specified in the Second Amended Application as allowable irregular costs were \$23,533 more than those identified and approved in Order No. 2019-422. Second Amended Application for Fiscal Year 2019-2020, ¶13 and Second Amended Exhibit A to the Second Amended Application.

Upon receipt of the Company’s Original Application, the Commission’s Clerk’s Office directed Chem-Nuclear to publish a Notice of Filing and Hearing and Pre-file Testimony Deadlines, advising the public of the submission of the Original Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear published the Notice in a newspaper of general circulation by November 8, 2019.² The Act specifies certain agencies to be parties of record in proceedings for identification of “allowable costs” before the Commission. Those parties

² The Commission-published Transmittal Letter required that the Notice of Filing be published on or before November 8, 2019, in newspapers of general circulation.

are the Executive Director of the ORS and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40(B)(9) (Supp. 2019). In addition, the Compact Commission and the South Carolina Department of Health and Environmental Control (“DHEC”) have the discretion under the Act to participate as parties. Id.

Pursuant to the provisions of S.C. Code Ann. § 48-46-40(B)(9), ORS participates as a party to these proceedings in order to represent “the interests of the State of South Carolina.”

On April 23, 2020, the Commission held an evidentiary hearing with respect to the Company’s Second Amended Application. The Honorable Comer H. Randall, Chairman, presided. Josh Minges, Esquire, served as Advisor to the Commission. Appearances were as follows: J. David Black, Esquire, represented Chem-Nuclear and Andrew M. Bateman, Esquire, represented ORS. No party petitioned to intervene in this docket. The South Carolina Attorney General’s Office did not appear or participate in the hearing.

Pursuant to a Joint Motion to Dispose of the Public Hearing and Decide the Matter Without an In-Person Public Hearing filed by ORS on behalf of it and Chem-Nuclear (“Motion”) and Order No. 2020-314, the Commission convened a virtual evidentiary hearing in which no witnesses were present and social distancing was observed.³ During the virtual hearing, Chem-Nuclear presented the verified amended direct testimony of one witness, Benjamin S. Smith, Chem-Nuclear’s Director for Barnwell Disposal Operations,

³ According to the Motion in light of the scheduling challenges presented by the 2019 Novel Coronavirus (“COVID- 19”), and Executive Order 2020-08 issued by Governor McMaster that declared a State of Emergency in South Carolina based on a determination that COVID-19 “poses an actual or imminent public health emergency for the State of South Carolina,” the parties asserted that a full, in-person evidentiary hearing in this matter was not necessary.

which was entered into the record as if given orally from the stand. Chem-Nuclear's Amended Direct Testimony and Second Amended Application, with attached exhibits Second Amended Exhibit A, Exhibit B, and Amended Exhibit C, were entered into the record as Hearing Exhibit No. 1. Counsel for ORS introduced ORS's Examination Report, with the attached Exhibit 1 and Exhibit 2, into the record as Hearing Exhibit No. 2.

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of “allowable costs” for Fiscal Year 2018- 2019 and for Fiscal Year 2019-2020 were resolved between the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

A. “Allowable Costs” for Fiscal Year 2018-2019

In accordance with the provisions of the “Collaborative Review of Chem-Nuclear's Operations and Efficiency Plan” (“OEP”), approved in Order No. 2004-349 for use in these “allowable cost” proceedings, Chem-Nuclear's Original, Amended, and Second Amended Applications separated costs into three (3) categories: fixed, variable and irregular. See Hearing Exhibit 1, Second Amended Exhibit A and Hearing Exhibit No. 2, ORS Examination Report, Exhibit 1. As recognized in Order No. 2004-349, the OEP was valid for use as a “baseline for establishing a method for identifying ‘allowable costs.’” Order No. 2004-349, p. 17.

1. Fixed Costs for Fiscal Year 2018-2019

Chem-Nuclear separated its fixed costs for Fiscal Year 2018-2019 into several

general categories: labor, fringe and non-labor costs, corporate allocation of general and administrative expense, equipment leases and support, depreciation, and insurance, as well as those fixed costs for which the statutory operating margin was not applicable, such as legal support. The Company's operating expense for that period resulted in total fixed costs of \$3,090,852, which Chem-Nuclear actually incurred. Hearing Exhibit No. 1, ¶10 and Second Amended Exhibit A, p. 1. The total fixed costs incurred for 2018-2019 were \$293,714 less than the level of fixed costs anticipated in Order No. 2019-422. Hearing Exhibit No. 1, Second Amended Exhibit A, p. 1 and Hearing Exhibit No. 2, ORS Examination Report, Exhibit 1, p. 1. The record supports the identification of \$3,090,852 as fixed "allowable costs" for Fiscal Year 2018-2019.

2. Variable Material Costs for Vaults for Fiscal Year 2018-2019

The actual costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. For Fiscal Year 2018-2019, Chem-Nuclear's actual cost for disposal vaults was \$417,495. Hearing Exhibit No. 1, Second Amended Exhibit A, p. 3. This amount is \$2,660 more than the \$414,835 calculated vault cost using the rates established in Order No. 2019-422. Therefore, the Company proposes an adjustment of \$2,660 in this category of costs.

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2018-2019

Order No. 2019-422 determined various categories of rates applicable to the following: vault purchase and inspection (per vault), ABC waste disposal (per shipment), slit trench waste operations (per slit trench offload), customer assistance (per shipment), and maintenance of trench records (per container). See Hearing Exhibit No. 1, Second

Amended Exhibit A, p. 2. The Company incurred actual variable labor and non-labor costs of \$268,358 in Fiscal Year 2018-2019. This amount is \$24,280 less than the amount that was anticipated based on rates provided in Commission Order 2019-422; therefore, the Company does not propose an adjustment in this category of costs. The record supports treatment of actual variable labor and non-labor costs of \$268,358 as “allowable.”

4. Irregular Costs for Fiscal Year 2018-2019

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. This category includes, but is not limited to, costs associated with trench design, site engineering, site maintenance, and license renewal and appeal costs. See Hearing Exhibit No. 1, Second Amended Exhibit A, pg. 4. The record contains descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2018-2019. *Id.*, Hearing Exhibit No. 1, Exhibit B. The evidence in the record establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2018-2019 of \$156,008. Hearing Exhibit No. 1, Second Amended Exhibit A, p. 4, and Hearing Exhibit No. 2, Exhibit 1, pg. 2. This amount is \$23,534 more than the \$132,474 in Irregular Costs identified in Commission Order No. 2019-422. The record supports treatment of actual irregular costs for fiscal year 2018-2019 of \$156,008 as “allowable.”

B. Proposed “Allowable Costs” for Fiscal Year 2019-2020

Chem-Nuclear’s Second Amended Application and the evidence in the record presented “allowable costs” to be identified for Fiscal Year 2019-2020, separated into the three (3) cost categories that were described in the Collaborative Review of the OEP and

adopted in Order No. 2004-349.

1. Allowable Fixed Costs for Fiscal Year 2019-2020

Chem-Nuclear proposed fixed costs of \$3,145,096 to be identified as “allowable costs” for Fiscal Year 2019-2020. That amount was based on costs incurred in the first half of Fiscal Year 2019-2020 and activities anticipated for the second half of the Fiscal Year. Hearing Exhibit No. 1, Amended Exhibit C, p. 6, Hearing Exhibit No. 2, Exhibit 2, pg. 3, Amended Direct Testimony of witness Smith, p. 10.

2. Allowable Irregular Costs for Fiscal Year 2019-2020

Chem-Nuclear’s Second Amended Application includes general categories of projects with estimated total costs of \$1,256,031, which it categorized as irregular costs for Fiscal Year 2019- 2020. These irregular costs, identified in Amended Exhibit C in Hearing Exhibit No. 1, are based on costs incurred in the first half of Fiscal Year 2019-2020 and activities anticipated for the second half of the Fiscal Year. Hearing Exhibit No. 1, Amended Exhibit C, p. 6, Hearing Exhibit No. 2, Exhibit 2, pg. 3, Amended Direct Testimony of witness Smith, pp. 10-11.

3. Variable Material Cost (Vaults) Rates for Fiscal Year 2019-2020

For Fiscal Year 2019-2020, Chem-Nuclear proposed variable material cost rates for each category of waste based upon actual experience during Fiscal Year 2019-2020, inflated by 2.5%. Amended Direct Testimony of witness Smith, p. 11, See Also Hearing Exhibit 1, Amended Exhibit C.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2019-2020

For Fiscal Year 2019-2020, Chem-Nuclear proposed rates for variable labor and

non-labor costs. Hearing Exhibit No. 1, Amended Exhibit C. Those rates pertained to five (5) categories: vault purchase and inspection (per vault); ABC waste disposal (per shipment); slit trench shipment (per offload); customer assistance (per shipment); and trench records (per container). The rates for vault purchase and inspection, ABC waste disposal, slit trench operations, customer assistance, and trench records were based on actual experience during Fiscal Year 2019-2020, inflated by 2.5%. Amended Direct Testimony of witness Smith, p. 11.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. § 48-46-40(B), et seq. to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site continuously since 1971 without interruptions. Undisputed amounts in Chem-Nuclear's accounts that will herein be identified and approved by this Commission as "allowable costs" for Fiscal Year 2018-2019 are included in Appendix A, which is attached to this Order.

3. Further, we approve and identify as "allowable costs" for Fiscal Year 2019-2020 the individual figures and the sum of \$4,401,127 in fixed and irregular costs, as reflected in Appendix B, which is attached to this Order.

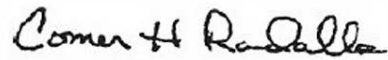
4. We further approve the variable cost rates for Fiscal Year 2019-2020, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable cost category will be dependent on the actual volumes and classes

of waste received. The rates in Appendix B are appropriately documented and supported by evidence in the record of this proceeding.

5. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

6. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Comer H. "Randy" Randall, Chairman

ATTEST:



Jocelyn Boyd, Chief Clerk/Executive Director

APPENDIX A – Order No. 2020-441
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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2019

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Labor, Fringe and Non-Labor	\$1,912,214
Depreciation	\$134,780
Insurance	\$311,154
Equipment Leases and Support	\$108,639
Corporate Allocations (G&A)	\$619,696
Legal Support (License Appeal)*	\$4,369
Total Fixed Costs	\$3,090,852
Variable Costs	
Variable Labor and Non-Labor**	\$268,358
Vault Costs	\$417,495
Total Variable Costs	\$685,853
Irregular Costs	
Total Irregular Costs	\$156,008
Total Allowable Costs	\$3,932,713

* Not subject to statutory operating margin.

**Categories of costs include: Vault Purchase and Inspection, ABC Waste Disposal, Slit Trench Operations, Customer Assistance and Trench Records.

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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2019

<u>Irregular Cost Item</u>	<u>Labor</u>	<u>Non-Labor</u>	<u>Total Cost</u>
Various Trenches	\$33,159	\$48,401	\$81,560
License Renewal and Appeal	\$2,618	\$0	\$2,618
Trench Records Software	\$11,554	\$0	\$11,554
Site Maintenance	\$561	\$0	\$561
Storm Damage Repairs and Clean-up	\$1,232	\$0	\$1,232
Operations Evaluation	\$0	\$58,496	\$58,496
Large Component Disposal	(\$13)	\$0	(\$13)
<u>Total Irregular Costs</u>	<u>\$49,111</u>	<u>\$106,897</u>	<u>\$156,008</u>

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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year 2019-2020 (Ending June 30, 2020)

<u>Description</u>	<u>Allowable Cost</u>
Fixed Costs	
Labor, Fringe and Non-Labor	\$1,975,000
Depreciation	\$136,000
Insurance	\$319,853
Equipment Leases and Support	\$83,228
Corporate Allocations (G&A, IT)	\$631,015
Legal Support (License Appeal)*	\$0
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Total Fixed Costs	\$3,145,096
Irregular Costs	
Trenches (Design, Construct, Backfill)	\$600,000
License Renewal and Appeal Costs	\$21
Large Component Disposal	\$656,798
Storm Damage Repairs and Clean-up	(\$1,232)
Trench Records Software	\$444
	<hr/>
Total Irregular Costs	\$1,256,031
	<hr/>
Total Fixed and Irregular Costs	\$4,401,127
Variable Costs	
<u>Variable Labor and Non-Labor Rates</u>	
Vault Purchase and Inspection (per vault)	\$187.07
ABC Waste Disposal (per shipment)	\$1,589.54
Slit Trench Shipment (per offload)	\$44,844.35
Customer Assistance (per shipment)	\$131.43
Trench Records (per container)	\$315.67
<u>Variable Material Cost (Vault Costs)</u>	
Class A Waste (per cubic foot)	\$38.28
Class B Waste (per cubic foot)	\$57.52
Class C Waste (per cubic foot)	\$53.00
Slit Trench Waste (per cubic foot)	\$188.57